

Matthew A. Rosenthal, Esq. (SBN 279334)  
Matt@westgatelaw.com  
Westgate Law  
15760 Ventura Blvd., Suite 880  
Los Angeles, CA 91436  
T: (818) 200-1497; F: (818) 574-6022  
Attorney for Plaintiffs,  
GLADIS ZELAYA, an individual;  
IRIS ZELAYA, an individual

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

GLADIS ZELAYA, an individual;  
IRIS ZELAYA, an individual;

Plaintiffs;

v.

AMERICAN HONDA FINANCE  
CORPORATION; CONSOLIDATED  
ASSET RECOVERY SYSTEMS;  
MORGAN RECOVERY  
CORPORATION;

Defendant(s).

**Case No.: 2:16-cv-1658**

**COMPLAINT**

- 1. Violations of the Rees-  
Levering Automobile Sales  
Financing Act, Cal. Civ. Code  
§§ 2981 *et seq.***
- 2. Violations of the Fair Debt  
Collection Practices Act, 15  
USC § 1692 *et seq.***
- 3. Violations of the Rosenthal  
Fair Debt Collection Practices  
Act, Cal. Civ. Code § 1788;**
- 4. Breach of Contract**
- 5. Conversion**

GLADIS ZELAYA, an individual; and IRIS ZELAYA, an individual  
(collectively, "Plaintiffs"), by their attorneys, WESTGATE LAW, allege the  
following against AMERICAN HONDA FINANCE CORPORATION;  
CONSOLIDATED ASSET RECOVERY SYSTEMS; MORGAN RECOVERY  
CORPORATION (collectively, "Defendants"):

1 **INTRODUCTION**

2 1. Count I of Plaintiff's Complaint is based on the Rees-Levering Automobile  
3 Sales Financing Act, Cal. Civ. Code §§ 2981 *et seq.*

4 2. Count II of Plaintiff's Complaint is based on the Fair Debt Collection  
5 Practices Act, 15 U.S.C. 1692 *et seq.* (FDCPA).

6 3. Count III of Plaintiff's Complaint is based on the Rosenthal Fair Debt  
7 Collection Practices Act, Cal. Civ. Code §1788 *et seq.* (RFDCPA).

8 4. Count IV of Plaintiff's Complaint is based on the common-law tort of Breach  
9 of Contract.

10 5. Count V of Plaintiff's Complaint is based on the common-law tort of  
11 Conversion.

12 **JURISDICTION AND VENUE**

13 6. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states  
14 that such actions may be brought and heard before "any appropriate United States  
15 district court without regard to the amount in controversy," and 28 U.S.C. 1367  
16 grants this court supplemental jurisdiction over the state law claims contained  
17 herein.

18 7. Defendants each conduct business in the state of California; therefore,  
19 personal jurisdiction is established.

20 8. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

21 **PARTIES**

22 9. Plaintiff is a natural person residing in Los Angeles, Los Angeles County,  
23 California.

24 10. Defendant American Honda Finance Corporation (hereinafter "Honda") is a  
25 national company with offices in Torrance, California.

1 11. Defendant Consolidated Asset Recovery Systems (hereinafter “CARS”) is a  
2 national company with a business office in Raleigh, North Carolina.

3 12. Defendant Morgan Recovery Corporation (hereinafter “Morgan Recovery”)  
4 is a company with a business office in Huntington Beach, California.

5 **FACTUAL ALLEGATIONS**

6 13. On May 31, 2014, Plaintiffs entered into agreement with Defendant Honda  
7 for the purchase of a 2014 Honda CRV with Vehicle Identification Number  
8 2HKRM3H5DEH54Z478 (hereinafter “Vehicle”).

9 14. On or around September 29, 2015, Plaintiff Iris Zelaya (hereinafter “Iris”)  
10 received a call from Honda’s representative.

11 15. In the course of the telephone call on or around September 30, 2015, Honda’s  
12 representative informed Iris that her account was in arrears due to failure to make  
13 the August, 2015 payment.

14 16. In the course of the telephone call on or around September 30, 2015 Honda’s  
15 representative demanded that Iris pay a total of \$1,554.68, reflecting an outstanding  
16 account balance of \$1,530.00 and a late payment fee of \$24.68. In response, Iris  
17 made a payment to Honda in the amount of \$1,554.68 on September 30, 2015,  
18 thereby bringing the account current as of that date.

19 17. In an account statement dated October 3, 2015, Honda stated that the total  
20 amount due on Plaintiff’s account on October 25, 2015 would be \$494.00, reflecting  
21 the regular payment amount of \$493.66 and \$.34 in fees. *See* Account Statement  
22 attached hereto as Exhibit “A.”

23 18. Despite bringing her account current on September 29, 2015, the Vehicle  
24 was repossessed at Honda’s direction on October 24, 2015.

25 19. At the time of the repossession, the Vehicle contained several of Iris’

1 personal effects, including camping equipment, shoes, and Iris' college transcripts.

2 20. Immediately upon realizing that the Vehicle had been repossessed, Iris  
3 telephoned Honda and spoke to Honda's representative. Honda's representative  
4 informed Iris that her account was current, that no repossession order had been  
5 placed on Iris' car, and suggested that Iris contact the police.

6 21. Iris thereupon contacted the police department of Hawthorne, California  
7 regarding the whereabouts of her vehicle. The police informed Iris that no  
8 repossession report was currently on file. Iris then prepared a stolen vehicle report  
9 to be submitted to the California Highway Patrol. *See* Police Report attached hereto  
10 as Exhibit "B."

11 22. Believing her car to be stolen, Iris rented a car on October 25, 2015 so that  
12 she could continue to attend school and work.

13 23. On Friday, October 30, 2016, Iris again spoke to Honda's representative in a  
14 telephone conversation. Once again, Honda's representative stated that the Vehicle  
15 account was current and no repossession order had been placed for the Vehicle.

16 24. On Saturday, November 7, 2015, Plaintiff Gladis Zelaya received a letter  
17 from Defendant CARS via Presorted First Class US Mail. The letter from CARS  
18 was dated October 26, 2015. *See* Letter from CARS attached hereto as Exhibit "C."

19 25. The letter from Defendant CARS did not identify the true and correct name  
20 of Defendant; rather, the letter merely identified the correspondence as being sent  
21 from "Recovery Department," with an address of 701 Corporate Center Dr., Ste.  
22 163, Raleigh, NC 27607. *See* Exhibit "C."

23 ///

1       26. The letter from Defendant CARS stated in full:

2               This letter serves as notice to you that the personal  
3               property which was recovered along with your vehicle on  
4               10/26/2015 will be stored for 60 (sixty) days from the date  
              of repossession. If you wish to retrieve your personal  
              belongings, please contact the agent at 714-494-1857 to  
              setup an appointment.

5               Sincerely,

6               Recovery Department  
7

8       27. On or around November 9, 2015, Iris called 714-494-1857, which was the  
9       telephone number listed on the letter from CARS. In reality, however, the phone  
10      number belongs to Defendant Morgan Recovery.

11      28. In the course of the phone call on or around November 9, 2015, Morgan  
12      Recovery confirmed that they had repossessed the Vehicle. Iris then made  
13      arrangements with Defendant's representative to retrieve the Vehicle.

14      29. On November 9, 2015, Iris met with Defendant Morgan Recovery's  
15      representative. Morgan Recovery's representative returned the Vehicle, and  
16      presented Iris with a Vehicle Condition Report.

17      30. On or around November 12, 2015 Plaintiff was driving her vehicle when she  
18      noticed that a part of her vehicle was dragging on the ground. Plaintiff thereafter  
19      took her vehicle to her local mechanic, who informed her that her suspension had  
20      been damaged by Morgan Recovery in the process of placing her car on a tow truck.  
21  
22  
23  
24  
25

**FIRST CAUSE OF ACTION**

**Violations of the Rees-Levering Automobile Sale Finance Act, Cal. Civ. Code  
§§ 2981 *et seq.* (“RLA”)**

By Plaintiffs as to Defendant American Honda Finance Corporation

31. Plaintiffs reallege and incorporate by reference the allegations of all paragraphs above.

32. The RLA governs conditional sale contracts for motor vehicles. The contract entered into by Plaintiffs is a conditional sales contract subject to and governed by the provisions of the RLA. Defendant American Honda Finance Corporation is or was a “seller” or “holder” of the Contract, as those terms are used in the statute.

33. Defendant American Honda Finance Corporation violated § 2983.3(a) of the RLA by repossessing the Vehicle in the absence of default in the performance of any of Plaintiffs’ obligations under the Contract.

34. As a direct and proximate result of Defendant’s violations of the RLA, Plaintiffs have suffered actual damages in an amount to be proven at trial.

35. Plaintiffs are entitled to an award of reasonable attorney’s fees and costs in the filing and prosecution of this action pursuant to California Civil Code § 2983.4

WHEREFORE, Plaintiffs pray for relief as set forth below.

**SECOND CAUSE OF ACTION**

**Violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.***

By Plaintiffs as to all Defendants

36. Plaintiffs reallege and incorporate by reference the allegations of all paragraphs above.

37. Plaintiffs are each a natural person obligated or allegedly obligated to pay a debt and is a “consumer” as defined by 15 U.S.C. § 1692a(3).

38. Defendants are each persons who use an instrumentality of interstate

1 commerce or the mails in a business the principal purpose of which is the  
2 enforcement of security interests and are each “debt collectors” as defined by 15  
3 U.S.C. § 1692a(6).

4 39. Plaintiffs’ alleged debt arises from transactions for personal, family, and/or  
5 household purposes and is a “debt” as defined by 15 U.S.C. § 1692a(5).

6 40. The FDCPA states: “A debt collector may not use unfair or unconscionable  
7 means to collect or attempt to collect any debt. Without limiting the general  
8 application of the foregoing, the following conduct is a violation of this section.

9 (6) Taking or threatening to take any nonjudicial action to effect  
10 dispossession or disablement of property if—

11 (A) **there is no present right to possession of the property**  
12 claimed as collateral through an enforceable security interest.

13 15 U.S.C. §1692f(6)(A).

14 41. As alleged herein, Plaintiffs had fully performed their duties and obligations  
15 under the Vehicle Contract, thereby entitling Plaintiffs to full possession of the  
16 Vehicle. Therefore, Defendants violated § 1692f(6)(A) by taking any nonjudicial  
17 action to repossess Plaintiff’s Vehicle without a present right to possession of the  
18 Vehicle.

19 42. As a proximate result of Defendants’ violation of the FDCPA, Plaintiffs have  
20 been damaged in amounts which are subject to proof.

21 43. Plaintiffs are entitled to recover actual damages pursuant to 15 U.S.C. §  
22 1692k(a)(1).

23 44. Plaintiffs are entitled to recover statutory damages pursuant to 15 U.S.C. §  
24 1692k(a)(2)(A).

25 45. Plaintiffs are entitled to an award of reasonable attorney’s fees and costs in

1 the filing and prosecution of the action pursuant to 15 U.S.C. § 1692k(a)(3).

2 WHEREFORE, Plaintiffs pray for relief as set forth below.

3 **THIRD CAUSE OF ACTION**

4 **Violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code**  
5 **§§ 1788 *et seq.* (“RFDCPA”)**

By Plaintiffs as to all Defendants

6 46. Plaintiffs reallege and incorporate by reference the allegations of all  
7 paragraphs above.

8 47. Plaintiffs each are a natural person obligated or allegedly obligated to pay a  
9 debt and a “debtor” as defined by the RFDCPA, Cal. Civ. Code § 1788.2(h).

10 48. Defendants each are persons who regularly and in the ordinary course of  
11 business, on behalf of themselves or others, engage in acts and practices in  
12 connection with the collection of money, property or their equivalent which is due  
13 or owing or alleged to be due and owing from a natural person to another natural  
14 person and are each “debt collectors” as defined by the RFDCPA, Cal. Civ. Code §  
15 1788.2(c).

16 49. Defendants violated the RFDCPA based on the following:

- 17 a. Defendants violated §1788.17 of the RFDCPA by continuously failing  
18 to comply with the statutory regulations contained within the FDCPA,  
19 15 U.S.C. § 1692.

20 50. Plaintiffs are entitled to recover actual damages pursuant to Civil Code §  
21 1788.30(a).

22 51. Plaintiffs are entitled to statutory damages of \$1000.00 pursuant to the  
23 Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788.30(b).

24 52. Plaintiffs are entitled to recover costs and reasonable attorneys’ fees pursuant  
25 to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ Code § 1788.30(c).



1 WHEREFORE, Plaintiffs pray for relief as set forth below.

2  
3 **FOURTH CAUSE OF ACTION**

4 **Conversion**

By Plaintiffs as to all Defendants

5 53. Plaintiffs reallege and incorporates by reference the allegations of all  
6 paragraphs above.

7 54. At the time of Defendants' unlawful repossession, Plaintiffs were entitled to  
8 possession of the Vehicle because there was no default under the Contract.

9 55. Defendants' unlawful repossession of the vehicle constituted an interference  
10 with Plaintiffs' possession and right to possession of the Vehicle, and it deprived  
11 Plaintiffs of their right to possess the Vehicle. Defendants acted knowingly and or  
12 intentionally when they wrongfully repossessed the Vehicle.

13 56. Plaintiffs are entitled to recover damages for Defendants' conversion of their  
14 property according to proof.

15 57. Defendants acted with malice, oppression, and/or fraud towards Plaintiffs  
16 within the meaning of Civil Code § 3294, thereby entitling Plaintiffs to an award of  
17 punitive damages. Defendants' corporate officers, directors, or managing agents  
18 are personally guilty of oppression, fraud or malice, had advance knowledge of the  
19 unfitness of the employees who acted toward Plaintiff with malice, oppression,, or  
20 fraud, employed such employees with conscious disregards for the rights or safety  
21 of others, and/or themselves authorized or ratified the wrongful conduct or  
22 knowingly accepted and retained the benefits of the wrongdoing.

23 WHEREFORE, Plaintiffs prays for relief as set forth below.

**FIFTH CAUSE OF ACTION**  
**Breach of Contract**

By Plaintiffs as to Defendant American Honda Finance Corporation

58. Plaintiffs reallege and incorporate herein by reference the allegations of all paragraphs above.

59. Defendant American Honda Motor Finance promised and agreed in the Contract to repossess Plaintiffs' Vehicle only if Plaintiffs were in default under the Contract, and only if the repossession was accomplished peacefully and allowed by law. Defendants breached the contract when they repossessed Plaintiff's Vehicle in the absence of default and/or in breach of the peace, as alleged herein.

60. Plaintiffs have performed all obligations required by the Contract, except those obligations Plaintiffs were excused or prevented from performing.

61. As a proximate result of Defendant American Honda Motor Finance's breach of the Contract, Plaintiffs have suffered damages in an amount to be determined according to proof.

62. Plaintiffs seek recovery of her attorneys' fees, costs, and expenses incurred in the filing and prosecution of the action pursuant to the Contract and Civil Code § 1717.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

1. For actual and compensatory damages;
2. For statutory damages;
3. For punitive damages;
4. For an award of Plaintiffs' attorney's fees, costs, and expenses incurred in the investigation, filing, and prosecution of this action; and
5. For any other such relief this Court may deem just and proper.

1                                   **REQUEST FOR JURY TRIAL**

2           Plaintiffs demand a trial by jury in the present action.

3  
4                                   RESPECTFULLY SUBMITTED,  
5           DATED: March 10, 2016                   WESTGATE LAW

6  
7                                   By: /s/ Matthew A. Rosenthal  
8                                   Matthew A. Rosenthal  
9                                   Attorney for Plaintiff  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25